Chaim Babad, Usher Babad, Chaim Schweid, Baruch Nathan Halberstan, LSM Management (Bernat Steinmetz, General Partner), and Sherman Management Co. (Emanual Steinmetz, General Partner), a co-partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., and Tilden Arms Management Corp., a single employer *and* Local 32B-32J, Service Employees International Union, AFL–CIO. Case 29–CA–9955

April 9, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On April 23, 1991, Administrative Law Judge Howard Edelman issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the supplemental decision and the record in light of the Respondent's exceptions and brief and has decided to adopt the judge's rulings, findings,[1] and conclusions only to the extent consistent with this supplemental decision. For the reasons set forth in section 2 below, we vacate the judge's supplemental order and remand the case to the judge for a recalculation of the backpay owed employee Boykin.

1. The Respondent contends that Tilden Arms Management Corp. (the Corporation) was not alleged as a successor employer in the General Counsel's backpay specification and did not receive notice of the backpay proceeding. At the hearing, the judge granted the General Counsel's request to amend the specification to include the Corporation as the Respondent. We find no merit to Respondent's contention.

The record shows that in January 1986, Respondent Tilden Arms Management Co., which was admitted in the underlying proceeding to be a single employer with Respondent Toby Estates, Inc., transferred title to the apartment building to the Corporation. Respondent Tilden Arms Management Co. at the time of the backpay hearing was a majority shareholder in the Corporation and controlled its board of directors. Chaim Babad, the general manager and chief operating officer of the Respondent entities in the underlying unfair labor practice case, controlled their labor relations. See *Tilden Arms Management Co*., 276 NLRB 1111, 1112 (1985). He also controlled the operations and labor relations of the Corporation during the period of time relevant to the instant backpay hearing.

Under well-established principles, more than one enterprise will be considered to constitute a single employer where there is common ownership or financial control, common management, interrelation of operations, and centralized control of labor relations. *Radio Union Local 1264 v. Broadcast Service*, 380 U.S. 255, 256 (1965); *Watt Electric Co*., 273 NLRB 655, 657 (1984). All four factors need not be present before a single-employer finding can be made. *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), enfd. 626 F.2d 865 (9th Cir. 1980). Here as described above, the record affirmatively shows the existence of common ownership, common management, and common control of labor relations. Accordingly, we find that the Corporation, as of the time of the hearing, constituted a single employer with the other Respondent entities. Because the Corporation and the other Respondent entities are a single employer, service of the backpay specification and notice of hearing on the other entities constitutes service on the Corporation. See *Rainbow Press of Fredonia*, 287 NLRB 477, 482 (1987).

2. We find merit in the Respondent's exception to the judge's finding that backpay amounts due should be calculated based on the terms and conditions of employment set forth in the predecessor employer's collective-bargaining agreement with the Union. In the underlying unfair labor practice proceeding, the Board ordered the Respondent to ''make [William Boykin] whole for any loss of earnings and other benefits.'' 276 NLRB 1111, 1121 (1985). The judge in the instant proceeding, relying on *Love's Barbecue Restaurant No. 62*, 245 NLRB 78 (1979), enfd. in pertinent part 640 F.2d 1094, 1102–1103 (9th Cir. 1981), and *State Distributing Co*., 282 NLRB 1048 (1987), interpreted the make-whole remedy to require the Respondent, a successor employer, to restore the pay rate and benefits the predecessor employer had provided pursuant to a collective-bargaining agreement. The Board's remedial Order, however, did not include a requirement that the Respondent reinstate the terms and conditions of employment set forth in the predecessor employer's agreement with the Union. That Order was enforced by the Court of Appeals for the Second Circuit. Docket No. 87-4072 (Nov. 20, 1987) (unpublished). In these circumstances, we shall not, in the instant backpay proceeding, provide for a backpay remedy calculated on

[1] In agreeing with the judge the money William Boykin received as a result of an arbitration award should not be included in Boykin's interim earnings, we note that the arbitration award was received from the predecessor employer.

However, we note, in accordance with the Board's decision in the underlying unfair labor practice proceeding, that the Respondent should be credited for the $2000 it paid to Boykin. 276 NLRB 1111, 1120 (1985), enfd. Docket No. 87-4072 (2d Cir. Nov. 20, 1987) (unpublished).

the basis of the contractual terms.[2] See *Dahl Fish Co*., 299 NLRB 413 fn. 3 (1990). Accordingly, we shall remand the case to the judge for recalculation of the backpay owed, considering inter alia, the wages and terms and conditions of employment of replacement employees, as well as those offered to Boykin.

3. The Respondent argues that it first offered Boykin employment at $180 per week at the time of the takeover and that he should therefore receive no backpay. Based on his finding that the Respondent was required to pay the contractual wage rate, the judge found that the Respondent did not make a valid offer of employment to Boykin. Inasmuch as we find that the judge erred in concluding that the Respondent was required to offer the contractual wage rate to Boykin, our remand also requires the judge to determine whether Boykin received a valid offer of employment.[3]

ORDER

It is ordered that the case is remanded to Judge Edelman for further proceedings, including additional hearing, if necessary, consistent with this decision.

IT IS FURTHER ORDERED that the judge, if necessary, prepare and serve on the parties a second supplemental decision containing findings, conclusions, and recommendations, based on all the record evidence. Following the service of the second supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

[2] Accordingly, the judge was incorrect in ordering payments to the pension and welfare funds on behalf of the discriminatees, as provided for in the predecessor's contract.

[3] In remanding this case to the judge, we stress that on the present record we are unable to determine what effect, if any, the Respondent's purported offer of reinstatement has on its backpay obligation to discriminatee Boykin.

April M. Wexler, Esq., for the General Counsel.
Morris Tuchman, Esq., for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on October 16, 1990, in Brooklyn, New York.

On September 30, 1985, the National Labor Relations Board issued its decision ordering the above-captioned Respondent/Employer (Respondent)[1] to offer reinstatement and to make whole employees Nolly Baynes, Cave Tobin, and William Boykin. On November 20, 1987, the United States Court of Appeals for the Second Circuit entered a judgment enforcing the Board's Order. Following the issuance of the circuit court's decision, a controversy arose concerning whether Respondent, as part of the Board's make-whole remedy was required to pay to Local 32B-32J, Service Employees International Union, AFL–CIO (the Union), the collective-bargaining representative for the above-named employees, fund contributions, on behalf of the above-named employees, to the Building Services 32B-32J Pension and Health Funds (the Funds). Another controversy arose concerning the gross backpay and the interim earnings of Boykin.[2]

Briefs were filed by counsel for the General Counsel and counsel for Respondent. On consideration of the briefs, the entire record, and based on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

In the underlying case the Board found that Respondent was a successor employer. This finding was adopted by the court of appeals. *Tilden Arms Management Co.*, 276 NLRB 1111 (1985). ''Usually, a successor employer is free to set initial terms and conditions of employment without first bargaining with the incumbent union.'' *NLRB v. World Evangelism*, 656 F.2d 1349 (9th Cir. 1981); *Burns Security Services v. NLRB*, 406 U.S. 272, 294–295 (1972); *Spruce Up Corp*., 209 NLRB 194, 195 (1974). It is Respondent's contention that relying on such principle, Respondent is not obligated to pay to the fund as part of a make-whole remedy, and can set initial rates of pay. Thus an offer of reinstatement, if otherwise valid, would not be rendered invalid, if the rate of pay were below that of the predecessor employer's rate of pay set forth in the agreement between the predecessor employer and the Union. However, in the instant case, unlike in *Burns* supra, the Board found that Respondent unlawfully bribed employees to quit, and in effect refused to hire employees who were members of the Union and thus prevented the Union from acquiring a continuing majority status. The Board concluded that such conduct violated Section 8(a)(1), (3), and (5) of the Act. In these circumstances, the rationale of *Burns* does not apply.

In *State Distributing Co.*, 282 NLRB 1048 (1987), a case very similar to the instant case, the Board found that Respondent had to bargain with the union before fixing initial terms and conditions of employment. *Potter's Drug Enterprise*, 233 NLRB 15 (1977), enfd. mem. 99 LRRM 3327 (9th Cir. 1978); *Love's Barbecue Restaurant No. 62*, 245 NLRB 78 (1979), enfd. in pertinent part sub nom. *Kallman v. NLRB*, 640 F.2d 1094, 1102–1103 (9th Cir. 1981). The respondent was ordered to cancel on request by the union all terms and conditions unilaterally implemented and make whole the employees for all wages and benefits that would have been paid absent respondent's unlawful conduct from the date of implementation to the date of impasse, or the date agreement was reached. In connection with backpay the Board concluded it was appropriate to calculate backpay

[1] During the course of the trial, the caption of the case was amended to include Tilden Arms Management Corp. as part of the above-named single employer.

[2] During the trial of this case, the backpay claim of Cave Tobin was settled. As part of the settlement Tobin waived reinstatement. Following the close of trial, by motion filed by the General Counsel on November 6 and November 13, 1990, the backpay claim of Nolly Baynes was settled. As part of the settlement, Baynes waived reinstatement. Counsel for the General Counsel contends that notwithstanding such settlement fund contributions for these employees are still owed the Union.

based on the rates of pay set forth in the predecessor employer's agreement with the union, because of the successor employer's failure to recognize and bargain with the union. Moreover, the Board specifically provided that as part of such make-whole remedy, the respondent successor employer was required to remit to the union, fund payments provided by the agreement between the union and the predecessor employer. *State Distributing*, supra at fn. 2.

The fund payments provided by the union contract with the predecessor employer provided for a $12-per-week fund contribution per employee. Counsel for the General Counsel contends that such fund payments increase in the amount that such payments have increased in the industrywide agreement. The Board specifically rejected such contention in *J.R.R. Realty Co.*, 301 NLRB 473, 475 fn. 15 (1991).

Accordingly, I conclude that the gross backpay should be computed at the Union's agreement rate of $240 per week from April 20, 1982, until January 5, 1985, when Respondent granted similar replacement employees a 10.67-percent wage increase. Thereafter such pay rate shall include such increase and gross backpay thereafter calculated at $265.62 per week.

I further conclude that fund contributions be made to the Union from April 20, 1982, to date. Such fund contributions must be made on behalf of all three discriminatees, notwithstanding settlements of the backpay claims of Tobin and Baynes, although as to Tobin, contributions ended as of the second quarter of 1982.

Counsel for Respondent contends that Boykin did not make a good-faith search for interim employment. The credible and uncontradicted testimony of Boykin establishes that following Boykin's refusal of reinstatement by Respondent of April 20, 1982, he thereafter made the following search for work until he began regular employment for Edison Parking Corp., during the second quarter of 1984. Boykin made phone calls to various employers in his local area. He was unable to recall any specific employers. He also made a door-to-door search, and responded to newspaper ads in the New York Daily News concerning employment opportunities in the local area. Some of the employers he contacted personally without success, included Standard Novelty Company, Barclay Plaza, Macy's Department Store, Alexander's Department Store, and Lefrak City Apartments. During this period of unemployment he lived primarily on unemployment checks. To receive such checks he was required to report to Unemployment his search for work. To supplement such income, Boykin performed odd jobs for a neighbor whose husband was ill and was employed for a week by J. Esposito & Sons for a week. Such interim earnings are set forth as accurately as possible in the amended specification. As set forth above, his search for work ended in the second quarter of 1984, when he became employed by Edison and worked continuously thereafter until he was subsequently reemployed by Respondent, during the third quarter of 1987.

The general principles governing backpay proceedings are well-settled. The finding of an unfair labor practice is presumptive proof that some backpay is owed. *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170, 178 (2d Cir. 1965), cert. denied 384 U.S. 972 (1966). Once the General Counsel has shown the gross backpay due in the specification, the Employer has the burden of establishing affirmative defenses which would mitigate his liability, including willful loss of earnings and interim earnings to be deducted from the backpay award. *NLRB v. Brown & Root, Inc.*, 311 F.2d 447, 454 (8th Cir. 1963); see also *Sioux Falls Stock Yards Co.*, 236 NLRB 543 (1978).

Respondent does not meet its burden of proof by presenting evidence of lack of employee success in obtaining interim employment or of so-called ''incredibly low earnings, but must affirmatively demonstrate that the employee did not make reasonable efforts to find interim work.'' *NLRB v. Miami Coca-Cola Bottling Co.*, 360 F.2d 569, 575–576 (5th Cir. 1966).

The evidence must establish that during the backpay period there were sources of actual or potential employment that the claimant failed to explore, and must show if, where, and when the discriminatee would have been hired had they applied. Id. at 1308; *McLoughlin Mfg. Corp.*, 219 NLRB 920, 922 (1975); *Isaac & Vinson Security Services*, 208 NLRB 47, 52 (1973). *Champa Linen Service Co.*, 222 NLRB 940, 942, 1976).

Although the discriminatee must make reasonable efforts to mitigate his loss of income, he is held only to reasonable exertions, not to the highest standard of diligence. *NLRB v. Arduini Mfg. Co.*, 384 F.2d 420, 422–423 (1st Cir. 1968); *Otis Hospital*, 240 NLRB 173, 175 (1979). Success is not the measure of the sufficiency of the discriminatee's search for employment. The law only requires an ''honest, good faith effort.'' *NLRB v. Cashman Auto Co. & Red Cab Co.*, 223 F.2d 832, 836 (1st Cir. 1955). A discriminatee is not required to apply for each and every possible job that might have existed in the industry, or even to apply for work during each and every quarter. *Champa Linen Service*, supra at 942; *Madison Courier*, 202 NLRB 808, 814 (1973); *Sioux Falls Stock Yards Co.*, supra at 551; *Cornwell Co.*, 171 NLRB 342, 343 (1968). What constitutes reasonable efforts depends upon the circumstances of each case, an examination of the entire backpay period, not upon a purely mechanical examination of the number or kind of applications for work made by the discriminatees. *Cornwell Co.*, supra; *Mastro Plastics Corp.*, 136 NLRB 1342, 1359 (1962). In determining the reasonableness of this effort, the employee's skill, qualifications, age and labor conditions in the area are factors to be considered. Id. However, even where the evidence raises doubt as to the diligence of the claimants efforts to gain employment, it is the discriminatee who must receive the benefit of the doubt rather than the respondent wrongdoer whose conduct has created the situation giving rise to the uncertainty. *NLRB v. Miami Coca-Cola Bottling Co.*, supra at 572–573; *Neely's Car Clinic*, 255 NLRB 1420, 1421 (1981); *Kansas Refined Helium Co.*, 252 NLRB 1156, 1157 (1980), enfd. 683 F.2d 1296 (10th Cir. 1982); *Otis Hospital*, supra at 174.

Respondent contends that Boykin had a continuing duty to seek out different or additional employment in order to mitigate Respondent's backpay liability by 100 percent. This assertion has no foundation in law. Rather, it is well-settled that an employee who accepts appropriate employment at lower pay is not required to search for a better job. *Sioux Falls Stock Yards*, supra at 570; *Champa Linen Service*, supra at 942; *Firestone Synthetic Fibers & Textile Co.*, 207 NLRB 810, 815 (1973). Conversely, discriminatees are not required to lower their sights or accept employment which is not substantially equivalent, i.e., the same or better. *Southeastern Envelope Co.*, 246 NLRB 423, 430 (1979).

Although Boykin could not recall every employer he phoned, visited, or filled out an application for, such search took place over 7 years ago. It is to be expected that over such a period of time his memory would be considerably affected.

The Board has also found that poor recordkeeping, uncertain memory, and even exaggeration do not necessarily disqualify an employee from receiving backpay. *Kansas Refined Helium Co.*, supra at 1159; *Sioux Falls Stock Yards*, supra at 559–560. Further, it is neither unusual nor suspicious if a discriminatee cannot accurately recall details of work search undertaken several years before. *United Aircraft Corp.*, 204 NLRB 1068 fn. 4 (1973).

Finally, it should be noted that the Board and the Courts have held that:

> [I]t is not enough that the respondent thinks that employees should have been able to secure jobs. Suspicion and surmise are no more valid bases for decision in [the] backpay hearing than in an unfair labor practice hearing. [*Laidlaw Corp.*, 207 NLRB 591, 594 (1973), enfd. 507 F.2d 1381 (7th Cir. 1974), cert. denied 422 U.S. 1042 (1975).]

Clearly, the evidence establishes that Boykin engaged in a diligent search for work. Although he was not very successful in obtaining interim employment until 1984, I conclude that he did make reasonable efforts and thus cannot be faulted for his lack of success. Accordingly, I conclude Respondent has failed to meet its burden of proof. Accordingly, I conclude that Boykin should be awarded the backpay calculated as due him in the amended backpay specification.

Respondent contends that Boykin's reemployment to his former job at a rate of pay of $220 per week cuts off his backpay. Such contention is based on Respondent's contention that it has a right to establish initial rates of pay. However, as set forth above, I have concluded otherwise. I, therefore, conclude that the wages paid to Boykin from the period of reemployment to date constitute interim earnings, to be set off against that rate of pay. I have concluded he should have received, if a valid offer of reinstatement had been made.

Respondent also contends that a sum of money received by Boykin as a result of a successful arbitration brought by the Union against Henry Moses, the predecessor employer, should be counted as interim earnings. The Union's contract with Moses provided that the employer had an obligation to inform the Union, in case of a sale, etc., of the apartment building in issue. The contract provided for money damages of up to 6 months pay for each employee, in the event the employer failed to meet such obligation. As a result of the Union's successful arbitration, Boykin received $6240. It is clear that such sum of money had absolutely nothing to do with Respondent's backpay liability, anymore than a workmen's compensation award for job injury. The money was paid to Boykin, as a result of a legal obligation of the predecessor employer and has nothing to do with Respondent's backpay liability. Accordingly, I reject Respondent's contention.

Accordingly, I conclude the backpay due to Boykin and the fund contributions to the Union are as follows:

Computation of Backpay Due To William Boykin

I. GROSS BACKPAY

April 20, 1982, through January 1985—$240 per week
January 5, 1985 through present—$265.62 per week

1982	
2 (10 wks.)	$2,400
3	3,120
4	3,120
1983	
1	$3,120
2	3,120
3	3,120
4	3,120
1984	
1	$3,120
2	3,120
3	3,120
4	3,120
1985	
1	$3,453
2	3,453
3	3,453
4	3,453
1986	
1	$3,453
2	3,453
3	3,453
4	3,453
1987	
1	$3,453
2	3,453
3	3,453
4	3,453
1988	
1	$3,453
2	3,453
3	3,453
4	3,453
1989	
1	$3,453
2	3,453
3	3,453
4	3,453
1990	
1	$3,453
2	3,453
3	3,453

Computation of Interim Earnings of William Boykin

II. INTERIM EARNINGS

1992			
2	Odd Jobs	$250	
3	Odd Jobs	325	
4	Odd Jobs	325	
1983			
1	J. Esposito & Sons 1328 39th Street Brooklyn N.Y.	$198	
2	0		
3	0		
4	0		
1984			
1	0		
2	Edison Parking Corp. 100 Washington Street Newark, New Jersey		$2,267
3	Edison Parking Corp.		2,267
4	Edison Parking Corp.		2,267
1985			
1	Edison Parking Corp.		$2,399
2	Edison Parking Corp.		2,399
3	Edison Parking Corp.		2,399
4	Edison Parking Corp.		2,399
1986			
1	Edison Parking Corp.		$2,562
2	Edison Parking Corp.		2,562
3	Edison Parking Corp.		2,562
4	Edison Parking Corp.		2,562
1987			
1	Edison Parking Corp.		$2,693
2	Edison Parking Corp.		2,693
3	Edison Parking Corp.	$1,367	
	Tilden Arms Management	1,540	
	Quarter Total		2,907
4	Tilden Arms Management		2,860
1988			
1	Tilden Arms Management		$2,860
2	Tilden Arms Management		2,860
3	Tilden Arms Management		2,860
4	Tilden Arms Management		2,860
1989			
1	Tilden Arms Management		$2,860
2	Tilden Arms Management		2,860
3	Tilden Arms Management		2,860
4	Tilden Arms Management		2,860
1990			
1	Tilden Arms Management		$3,060
2	Tilden Arms Management		3,060
3	Tilden Arms Management		3,060

Computation of Net Backpay Due To William Boykin

III. COMPUTATION OF NET BACKPAY

YR./QTR.	*GROSS BACK-PAY*	*INTERIM EARNINGS*	*NET BACK-PAY*
1982			
2	$2,400	$250	$2,150
3	3,120	325	2,795
4	3,120	325	2,795
1983			
1	$3,120	$198	$2,922
2	3,120	0	3,120
3	3,120	0	3,120
4	3,120	0	3,120
1984			
1	$3,120	0	$3,120
2	3,120	$2,267	853
3	3,120	2,267	853
4	3,120	2,267	853
1985			
1	$3,453	$2,399	$1,054
2	3,453	2,399	1,054
3	3,453	2,399	1,054
4	3,453	2,399	1,054
1986			
1	$3,453	$2,562	$891
2	3,453	2,562	891
3	3,453	2,562	891
4	3,453	2,562	891
1987			
1	$3,453	$2,693	$760
2	3,453	2,693	760
3	3,453	2,907	546
4	3,453	2,860	593
1988			
1	$3,453	$2,860	$593
2	3,453	2,860	593
3	3,453	2,860	593
4	3,453	2,860	593
1989			
1	$3,453	$2,860	$593
2	3,453	2,860	593
3	3,453	2,860	593
4	3,453	2,860	593
1990			
1	$3,453	$3,060	$393
2	3,453	3,060	393
3	3,453	3,060	393
TOTAL DUE			$42,037

Plus any additional net backpay computed in the same manner to date with interest as computed pursuant to *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Computation of the Contributions Due to the Building Services 32B-32J Pension Fund

YR./QTR.	*BAYNES*	*BOYKIN*	*TOBIN*
1982			
2	$120	$120	$120
3	156	156	0
4	156	156	0
1983			
1	$156	$156	$0
2	156	156	0
3	156	156	0
4	156	156	0
1984			
1	$156	$156	$0
2	156	156	0
3	156	156	0
4	156	156	0
1985			
1	$156	$156	$0
2	156	156	0
3	156	156	0
4	156	156	0
1986			
1	$156	$156	$0
2	156	156	0
3	156	156	0
4	156	156	0
1987			
1	$156	$156	$0
2	156	156	0
3	156	156	0
4	156	156	0
1988			
1	$156	$156	$0
2	156	156	0
3	156	156	0
4	156	156	0
1989			
1	$156	$156	$0
2	156	156	0
3	156	156	0
4	156	156	0
1990			
1	$156	$156	$0
2	156	156	0
3	156	156	0
TOTAL DUE	$5,268	$5,268	$120

Plus any additional contributions computed in the same manner to date with interest as computed above.

Computation of the Contributions Due to the Building Services 32B-32J Health Fund

YR./QTR.	*BAYNES*	*BOYKIN*	*TOBIN*
1982			
2	$181	$181	$181
3	181	181	0
4	181	181	0
1983			
1	$181	$181	$0
2	181	181	0
3	181	181	0
4	181	181	0
1984			
1	$181	$181	$0
2	181	181	0
3	181	181	0
4	181	181	0
1985			
1	$181	$181	$0
2	181	181	0
3	181	181	0
4	181	181	0
1986			
1	181	181	0
2	181	181	0
3	181	181	0
4	181	181	0
1987			
1	$181	$181	$0
2	181	181	0
3	181	181	0
4	181	181	0
1988			
1	$181	$181	$0
2	181	181	0
3	181	181	0
4	181	181	0
1989			
1	$181	$181	$0
2	181	181	0
3	181	181	0
4	181	181	0
1990			
1	$181	$181	$0
2	181	181	0
3	181	181	0
TOTAL DUE	$6,154	$6,154	$181

ORDER[3]

Respondent, Chaim Babad, Usher Babad, Chaim Schweid, Baruch Nathan Halberstan, LSM Management (Bernat Steinmetz, General Partner), and Sherman Management Co. (Emanuel Steinmetz, General Partner), a co-partnership d/b/a Tilden Arms Management Co. and Toby Estates, Inc., and Tilden Arms Management Corp., a single employer, their officers, agents, successors, and assigns shall pay individually and collectively to William Boykin $42,037, plus additional moneys due to date computed as described in this decision with interest as computed pursuant to *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to Local 32B-32J, Service Employees International Union, AFL–CIO for deposit in their pension fund, the sums $5268 on behalf of Nolly Baynes and William Boykin, and $120 on behalf of Carol Tobin, and deposit in their health fund the sums of $6154 on behalf of Baynes and Boykin, and $181 on behalf of Tobin, plus any additional contributions to date computed as set forth in this decision together with interest as computed above.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.